

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

IRENE M. PHILLION, Individually
and as Personal Representative of the,
Estate of LAWRENCE W. PHILLION,
KATHLEEN A. KIRST AND
JACQUELINE GARRETT,

Plaintiffs,

vs.

HOME DEPOT U.S.A., INC.,

Defendant.

Civil Action No. _____

JURY DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendant Home Depot U.S.A., Inc. ("Home Depot"), who files this its Notice of Removal on the basis of diversity jurisdiction, and would show the Court as follows:

1. Home Depot is the Defendant in a civil action pending in the 122nd Judicial District Court of Galveston County, Texas entitled *Irene M. Phillion, Individually and as Personal Representative of the Estate of Lawrence W. Phillion, Kathleen A. Kirst and Jacqueline Garrett vs. Home Depot U.S.A., Inc.*; Cause No. 11-CV-2026 (hereinafter referred to as the "State Court Action"). True and correct copies of all process, pleadings, and orders served upon Home Depot in the State Court Action are attached hereto as Exhibit "B," as required by 28 U.S.C. § 1446(a). Additionally, the list of counsel required by Local Rule 81 is attached hereto as Exhibit "C."

2. The State Court Action was filed on December 20, 2011. Home Depot was served with Plaintiffs' Original Petition on January 9, 2012. Plaintiffs' Original Petition asserts wrongful death and survivorship claims based on theories of negligence, and seeks actual damages arising

from the death of Lawrence W. Phillion. Plaintiffs' Original Petition alleges that on or about December 31, 2011[sic], Lawrence Phillion was at a Home Depot store in Clearlake Shores, Texas, and using a toilet with the reasonable expectation that its seat was secure, when the seat shifted off the toilet, causing Mr. Phillion to sustain serious injuries that were disabling and incapacitating. Specifically, wrongful death claims are brought under the Texas Wrongful Death Act (Tex. Civ. Pract. & Remedies Code section 71.002 by Irene Phillion, as surviving spouse, and Kathleen Kirst and Jacqueline Garrett, as surviving daughters, of Mr. Phillion—claims that could not be brought unless the Plaintiffs are claiming that the accident was the proximate cause of Mr. Phillion's death. Plaintiffs' Original Petition does not specify the amount of damages sought by Plaintiffs. However, due to the Plaintiffs' wrongful death claims (seeking all damages available under the Wrongful Death Act), the fact that Plaintiffs are claiming that the accident caused the death of Mr. Phillion and caused him related medical expenses, physical pain, mental anguish, and funeral expenses, and the fact that Plaintiffs are seeking recovery of exemplary damages, it is likely that Plaintiffs are each seeking damages in excess of \$75,000.00. This Notice of Removal, therefore, is timely filed within thirty (30) days of service of process of Plaintiffs' Original Petition upon Home Depot. *See* 28 U.S.C. § 1446(b).

DIVERSITY OF CITIZENSHIP

3. Plaintiffs Irene Phillion, Kathleen Phillion, and Jacqueline Garrett are citizens of the State of Texas.

4. Home Depot is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. Therefore, Home Depot is a citizen of the States of Delaware and Georgia.

5. Consequently, the district courts of the United States have original jurisdiction over this action based on complete diversity of citizenship amongst and between the parties, in that all Plaintiffs and all defendants are now, and were at the time this action commenced, diverse in citizenship from each other.

6. Under 28 U.S.C. § 1446(a), venue of the removed action is proper in this Court as it is the district and division embracing the place where the State Court Action is pending.

7. Pursuant to 28 U.S.C. § 1446(d), Home Depot will promptly give written notice of the filing of this notice of removal to Plaintiffs and will further file a copy of this Notice of Removal with the County Clerk of Galveston County, Texas, where the action was previously pending.

8. **Jury Demand** – Home Depot hereby requests trial by jury on all issues and claims in this action.

WHEREFORE, Home Depot U.S.A., Inc. hereby removes the case styled *Irene M. Phillion, Individually and as Personal Representative of the Estate of Lawrence W. Phillion, Kathleen A. Kirst and Jacqueline Garrett vs. Home Depot U.S.A., Inc.*; Cause No. 11-CV-2026, and respectfully requests that this Court assume full jurisdiction of this proceeding for all purposes as if originally filed in this Court, including but not limited to issuing any orders necessary to stay proceedings in the State Court Action.

Respectfully submitted,

By: /s/ Arthur K. Smith

Arthur K. Smith
Attorney-in-Charge
Texas State Bar No. 18534100
Southern District No. 2705

LAW OFFICES OF ARTHUR K. SMITH,
A Professional Corporation
507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

ATTORNEY FOR DEFENDANT
HOME DEPOT U.S.A., INC.

CERTIFICATE OF SERVICE

On the 23rd day of January, 2012, a true and correct copy of the foregoing was delivered via certified mail, return receipt requested, to plaintiffs through their counsel of record.

/s/ Arthur K. Smith
Arthur K. Smith

151012.78\Notice of Removal

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

IRENE M. PHILLION, Individually
and as Personal Representative of the,
Estate of LAWRENCE W. PHILLION,
KATHLEEN A. KIRST AND
JACQUELINE GARRETT,

Plaintiffs,

vs.

HOME DEPOT U.S.A., INC.,

Defendant.

Civil Action No. _____

JURY DEMANDED

INDEX OF DOCUMENTS FILED WITH NOTICE OF REMOVAL

EXHIBIT A Index of Documents Filed with Notice of Removal

EXHIBIT B State Court Documents

TAB NO.	STATE COURT DOCUMENT	DATE
1	Court's Civil Docket Sheet	N/A
2	Plaintiff's Original Petition	12/20/11
3	Civil Citation for Defendant Home Depot U.S.A., Inc. (served 1/9/12)	12/28/11
4	Civil Case Information Statement – Notice of Status Conference Setting on 3/22/12	1/2/12
5	Defendant Home Depot U.S.A., Inc.'s Original Answer to Plaintiffs' Original Petition	1/20/12

EXHIBIT C List of Counsel of Record

EXHIBIT A
INDEX OF STATE COURT DOCUMENTS FILED WITH NOTICE OF REMOVAL

EXHIBIT “B-1”

Logout My Account Search Menu New Case Search Refine Search Back

Location : District Civil and Family Court Images

CASE SUMMARY

CASE NO. 11-CV-2026

Phillion, Irene M., Indiv., etc., et al vs. Home Depot U.S.A, Inc., §
et al, et al §

Case Type: Injury/Damage - Other
Subtype: Personal Injury
Date Filed: 12/20/2011
Location: 122nd District Court
Judicial Officer: Ellisor, John

PARTY INFORMATION

Defendant Home Depot Store No. 6560
Austin, TX 78701

Lead Attorneys

Defendant Home Depot U.S.A, Inc., et al
Austin, TX 78701

Plaintiff Garrett, Jacqueline S

Timothy R. Hightower

Retained

832-433-7279(W)
832-431-4288(F)

Plaintiff Kirst, Kathleen A

Timothy R. Hightower

Retained

832-433-7279(W)
832-431-4288(F)

Plaintiff Phillion, Irene M., Indiv., etc., et al

Timothy R. Hightower

Retained

832-433-7279(W)
832-431-4288(F)

Plaintiff Phillion, Lawrence P

Timothy R. Hightower

Retained

832-433-7279(W)
832-431-4288(F)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

12/20/2011	<u>Original Petition - OCA</u>
12/20/2011	<u>Correspondence from Attorney</u> <i>cover letter</i>
12/28/2011	<u>Citation Issuance - Work Product</u> <i>iss 2 cts x 8.00 given to atty amp</i>
12/28/2011	<u>Request for Service</u> <i>req for 2 cts x 8.00 given to amp for iss</i>
01/02/2012	<u>Information Sheet - for Case Filing</u>
03/22/2012	<u>Status Conference</u> (9:30 AM) (Judicial Officer Ellisor, John)

Unofficial Record

EXHIBIT “B-2”

7

CAUSE NO. 11CV2026

IRENE M. PHILLION, INDIV. AND AS
PERSONAL REP. OF THE ESTATE OF
LAWRENCE W. PHILLION,
KATHLEEN A. KIRST, AND
JACQUELINE GARRETT

11 DEC 20 PM 2:52 LC
IN THE DISTRICT COURT OF

*OKS Schmaier
Courtney*

GALVESTON COUNTY, TEXAS

VS.

HOME DEPOT U.S.A., INC. AND
HOME DEPOT STORE NO. 6560

122 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Plaintiffs Irene M. Phillion, Individually and as Personal Representative of the Estate of Lawrence P. Phillion, Kathleen A. Kirst, and Jacqueline S. Garrett (collectively referred to as "Plaintiffs"), complaining of Home Depot U.S.A., Inc. and Home Depot Store No. 6560 ("Defendants") and for cause of action would respectfully show as follows:

I.

Plaintiffs intend to conduct discovery under Level II, pursuant to 190.4 of the TEXAS RULES OF CIVIL PROCEDURE.

II.

Plaintiff Irene M. Phillion is a resident of Harris County, Texas.

Plaintiff Kathleen A. Kirst is a resident of Galveston County, Texas.

Plaintiff Jacqueline S. Garrett is a resident of Galveston County, Texas.

11-CV-2026
DCOPET
Original Petition - OCA
322546



\$25.00
Chck
for

SIC 3-22-13 gpc

Defendant, Home Depot U.S.A., Inc., is a foreign entity doing business in the State of Texas and may be served with process by serving its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever it may be found.

Defendant, Home Depot Store No. 6560, is an entity doing business in the State of Texas and may be served with process by serving its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701, or wherever it may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of "Home Depot Store No. 6560" with regards to the events described in this Petition. Plaintiffs expressly invoke their right under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time upon the motion of any party or of the Court.

III.

This Court has jurisdiction and venue is proper in Galveston County, Texas pursuant to Texas Civil Practice & Remedies Code §15.002(a)1 in that all or a substantial part of the events or omissions giving rise to the claim occurred in Galveston County.

IV.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within fifty (50) days of the service of this request.

V.

Plaintiffs hereby request and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit or the damages resulting there from; including statements, photographs, videotapes, audiotapes, surveillance or security tapes or information, business or medical records, incident reports, maintenance records, tenant files, periodic reports, financial statements, bills, telephone call slips or records, estimates, invoices, checks, measurements, correspondence, facsimiles, email, voice mail, text messages, any evidence involving the incident in question, and any electronic image or information related to the referenced incident or damages. Failure to maintain such items will constitute "spoliation" of the evidence.

VI.

On or about December 31, 2011, during normal business hours, Lawrence W. Phillion ("Mr. Phillion"), deceased, entered the Defendants' business premises located at 507 FM 2094, Clearlake Shores, TX 77565.

At that time, Defendants extended an open invitation to the public, including Mr. Phillion, to enter the premises and purchase goods and services being sold by the Defendants. Mr. Phillion, a customer, entered the premises as a business invitee to whom Defendants owed the duty to use ordinary care in making its premises reasonably safe and/or warning Mr. Phillion of any dangerous conditions and/or activities existing upon the premises.

Based on information and belief, on the occasion in question, Mr. Phillion went to the men's room and sat on a toilet with the reasonable expectation that the toilet seat was secure. However, Defendants failed to ensure the bathroom was fit for use and failed to warn Mr. Phillion of the unreasonably dangerous condition (an unsecured toilet seat). The seat shifted off

the toilet when Mr. Phillion was in the process of relieving himself and caused Mr. Phillion to fall hard to the floor between the toilet and the wall. The fall proximately caused Mr. Phillion to suffer serious injuries which were disabling and incapacitating and other damages more specifically described herein.

VII.

On the occasion in question, the Defendants, acting through its agents, servants, and/or employees who were at all times acting within the course and scope of their employment, committed acts and/or omissions that constituted negligence which proximately caused the incident in question; to wit:

1. In failing to maintain the premises in question in a reasonably safe condition and free of hazards to Plaintiff and other invitees entering the premises;
2. In failing to correct the unreasonably dangerous condition which was created by the unsecured toilet seat of the premises in question;
3. In failing to warn invitees, including the Plaintiff of dangerous condition of the premises in question;
4. In failing to properly inspect the premises in question to discover the unreasonably dangerous condition created by the unsecured toilet seat in question;
5. In failing to properly train its agents, servants, and/or employees regarding the proper manner in which to make the premises reasonably safe;
6. In failing to implement proper policies, rules, and/or procedures to make its premises reasonably safe;
7. In failing to enforce proper policies, rules, and/or procedures to make its premises reasonably safe; and
8. In failing properly and adequately to supervise and oversee the store so as to prevent unreasonably dangerous conditions from existing on its premises.

Each of the above negligent acts and omissions constitute a breach of the duties owed by Defendants and such breach was a proximate cause of the injuries and damages suffered by

Plaintiffs. In this regard, Defendants were negligent, and this negligence was a proximate cause of Plaintiffs' injuries and damages.

VIII.

Pleading further, Plaintiffs would show that Defendants owed a duty to patrons, clients, and customers, including Mr. Phillion, to exercise ordinary care in the manner in which it maintained its premises.

Plaintiffs would further show that Defendants failed to use ordinary care in these respects, including but not limited to failing to properly supervise Defendants' personnel, failing to implement adequate policies, procedures and safeguards to ensure that unreasonably dangerous conditions were corrected or remedied so as to prevent the condition that resulted in Mr. Phillion's fall, and failing to provide adequate oversight for such employees.

The condition of the toilet posed an unreasonable risk of harm to invitees of Defendants of which Defendants knew, or reasonably should have known.

Defendants failed to exercise ordinary care to protect Mr. Phillion from the danger by both failing to remedy and/or correct the unsafe condition and by failing to adequately warn Mr. Phillion of the unsafe condition.

Each of the above negligent acts and omissions constitute a breach of the duties owed by Defendants and such breach was a proximate cause of the injuries and damages suffered by Mr. Phillion, deceased, and Plaintiffs. In this regard, Defendants were negligent, and this negligence was a proximate cause of Plaintiffs' injuries and damages.

IX.

As a necessary and proximate result of the aforementioned acts and omissions of negligence by the Defendant, Plaintiffs sustained damages which they are entitled to recover.

Mr. Phillion's wife, Irene M. Phillion, sue individually as a Wrongful Death Beneficiary pursuant to TEX. CIV. PRAC. & REM. CODE § 71.002 and as the Personal Representative of Mr. Phillion's Estate pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021 and claims damages for:

1. Reasonable and necessary medical expenses in the past;
2. Physical pain in the past;
3. Mental anguish in the past and future;
4. Physical impairment in the past;
5. Funeral expenses;
6. Loss of advice and counsel;
7. Loss of spousal services;
8. Loss of companionship and society; and
9. Exemplary damages.

Mr. Phillion's daughters, Kathleen A. Kirst and Jacqueline S. Garrett, sue as Wrongful Death Beneficiaries pursuant to TEX. CIV. PRAC. & REM. CODE § 71.002 and claim damages for:

1. Loss of advice and counsel;
2. Loss of parental services;
3. Mental anguish in the past and future;
4. Loss of companionship and society; and
5. Exemplary damages.

X.

In addition to the above mentioned and foregoing allegations, Plaintiffs further plead that they are entitled to pre-judgment and post-judgment interest at the highest rate allowed by law.

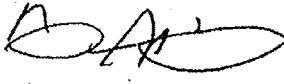
XI.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be cited in terms of law to appear and answer herein and that upon final trial and hearing hereof, that Plaintiffs recover damages from Defendants in accordance with the evidence; that Plaintiffs recovers costs of court herein expended; that Plaintiffs recovers interest to which Plaintiffs are justly entitled under the law, both prejudgment and post-judgment; that Plaintiffs recovers actual damages; that Plaintiffs are entitled to recover compensatory damages; and for such other further relief, both general and special, both in law and in equity, to which your Plaintiffs may be justly entitled.

Respectfully submitted,

HIGHTOWER, RUSSO & CAPELLAN

By:



Timothy R. Hightower
State Bar No. 00795421
Ivan J. Capellan
State Bar No. 24065001
639 Heights Blvd.
Houston, Texas 77007
(832) 433-7279
(832) 431-4288 (fax)

COUNSEL FOR PLAINTIFFS
IRENE M. PHILLION, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF LAWRENCE P.
PHILLION, KATHLEEN A. KIRST, AND
JACQUELINE S. GARRETT

EXHIBIT “B-3”

EXHIBIT “B-4”

**THE DISTRICT COURTS OF GALVESTON COUNTY
CIVIL CASE INFORMATION STATEMENT**

The case Information Statement is for administrative purposes only. It shall be filed with the Parties Original Pleadings and shall be served upon all other parties to the action. All Status Conferences will be set for Thursdays following 90 days from the date of filing.

Notice of Status Conference Setting: Please calendar this event

Location: 122nd District Court

Date and time: 03/22/2012 at 9:30 a.m.

11-CV-2026 - 122nd District Court

Phillion, Irene M., Indiv., etc., et al, et al vs. Home Depot U.S.A, Inc., et al, et al

Name of Primary Attorney filing this form

Name of Opposing Attorney, if known

Bar No. _____

Bar No. _____

Address _____

Address _____

City _____ State _____ Zip _____
()

City _____ State _____ Zip _____
()

Phone No. _____ Fax No. _____

Phone No. _____ Fax No. _____

Briefly describe the case, including special characteristics that may warrant extended discovery or accelerated disposition.

If discovery **LEVEL 3** is requested, explain why. Attach additional sheets, if necessary.

Estimated time for discovery _____

Estimated trial time _____

Do you presently anticipate adding any parties? _____ If so when? _____

Level Assignment Preferred: (please check one)

Level 1	Level 2	Level 3
\$50,000 or less	All Other Cases	Court Order Only

Is this case suitable for ADR? (yes or no) _____ ADR Method? _____

Signature of Attorney _____ Date signed _____

Printed Name of Attorney: _____

EXHIBIT “B-5”

CAUSE NO. 11-CV-2026

IRENE M. PHILLION, Individually
and as Personal Representative of the,
Estate of LAWRENCE W. PHILLION,
KATHLEEN A. KIRST AND
JACQUELINE GARRETT,

Plaintiffs,

vs.

HOME DEPOT U.S.A., INC.,

Defendant.

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

122nd JUDICIAL DISTRICT

**DEFENDANT HOME DEPOT U.S.A., INC.'S ORIGINAL ANSWER
TO PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE:

COMES NOW Home Depot U.S.A, Inc., (and hereinafter referred to as "Defendant"), Defendant in the above-entitled and numbered cause, and for its Original Answer to Plaintiffs' Original Petition would respectfully show unto the Court as follows:

I.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant hereby enters a general denial, and demands that Plaintiff be required to prove his allegations by a preponderance of the evidence.

II.

Pleading further, Defendant affirmative alleges that Lawrence W. Phillion's own negligence was the sole proximate cause, or alternatively, a proximate cause of the incident made the basis of this suit and Plaintiff's damages, if any.

III.

Pleading further, in the unlikely event Defendant is found at fault, the amount recovered for past medical or health care expenses incurred by Plaintiff is limited by Section 41.0105 of the Texas Civil Practice and Remedies Code.

IV.

In the alternative, Defendant further pleads that the incident made the basis of this suit and Plaintiff's damages, if any, were proximately caused by one or more third parties over whom Defendant had no control or right of control.

V.

By way of affirmative defense, Home Depot asserts that Lawrence W. Phillion failed to mitigate his damages, if any.

VI.

Pleading further and in the alternative, Defendant would show that any damages and/or injuries to Lawrence W. Phillion were caused, in whole or in part, by incidents, events, and/or medical conditions that pre-existed the incident alleged in Plaintiffs' petition, and for which Defendant bears no responsibility.

VII.

Pleading further and in the alternative, Defendant would show that Lawrence W. Phillion's injuries and/or damages, if any, were caused by events, incidents, and/or medical conditions which occurred or developed subsequent to the incident complained of in Plaintiffs' Original Petition, and for which Defendant bears no responsibility.

VIII.

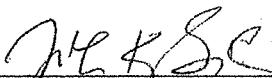
Defendant would further affirmatively invoke the limits of liability provided under Chapter

41 of the Texas Civil Practice & Remedies Code, including, but not limited to, those limits set forth in Sections 41.001 through 41.013. Specifically the limit of liability should be in conformance with the amount set forth in Section 41.008 of the Texas Civil Practice & Remedies Code.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiffs take nothing by this action and that Defendant be dismissed with its costs, and for such other relief, both general and specific, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

LAW OFFICES OF ARTHUR K. SMITH,
a Professional Corporation

By: 
Arthur K. Smith
State Bar No. 18534100

507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

ATTORNEYS FOR DEFENDANT
HOME DEPOT U.S.A., INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th of January, 2012, a copy of the foregoing pleading was forwarded via First Class U.S. Mail to Plaintiffs' counsel of record.

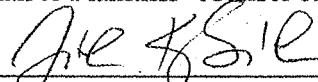

Arthur K. Smith

EXHIBIT C
INFORMATION TO BE FILED WITH NOTICE OF REMOVAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

IRENE M. PHILLION, Individually
and as Personal Representative of the,
Estate of LAWRENCE W. PHILLION,
KATHLEEN A. KIRST AND
JACQUELINE GARRETT,

Plaintiffs,

vs.

Civil Action No.

HOME DEPOT U.S.A., INC.,

Defendant.

JURY DEMANDED

INFORMATION TO BE FILED WITH NOTICE OF REMOVAL

List of all Parties in the Case, their Party Type, and Counsel

<u>Party and Party Type</u>	<u>Attorney(s)</u>
Irene M. Phillion, Individually and as Personal Representative of the Estate of Lawrence W. Phillion, Kathleen A. Kirst and Jacqueline Garrett <i>Plaintiffs</i>	Timothy R. Hightower State Bar No. 00795421 Hightower, Russo & Capellan 639 Heights Blvd. Houston, TX 77007 Telephone: (832) 433-7279 Facsimile: (832) 431-4288
Home Depot U.S.A., Inc. <i>Defendant</i>	Arthur K. Smith State Bar No. 18534100 LAW OFFICES OF ARTHUR K. SMITH, A Professional Corporation 507 Prestige Circle Allen, TX 75002 Telephone: (469) 519-2500 Facsimile: (469) 519-2555

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Irene M. Phillion, Indiv. & as Personal Representative of the Estate of Lawrence W. Phillion, Kathleen A. Kirst and Jacqueline Garrett

(b) County of Residence of First Listed Plaintiff Harris

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Timothy R. Hightower, Hightower, Russo & Chapellan, 639 Heights Blvd., Houston, TX 77007 832-433-7279

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACTS	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 310 Fraud <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/>	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	POLICE PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp'l. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332

Brief description of cause:
premises liability**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

/s/ Arthur K. Smith

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE